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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,446	07/12/2004	NORMAN D. LEVINE	9215.4803	4445

22235 7590 04/04/2007  
MALIN HALEY AND DIMAGGIO, PA  
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EXAMINER
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HARMON, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/710,446		LEVINE, NORMAN D.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Christopher R. Harmon		3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,19-29,38,39 and 45-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,19-29,38,39 and 45-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Interpretation - 35 USC § 112***

1. Claims 1 and 45 contain the limitation “means for producing suction” in “means plus function” form and since it meets the analysis set forth in MPEP 2181, the Examiner assumes that applicant wishes to invoke 35 USC 112, paragraph 6, however the scope of the “means” is inconsistent within the claims. Note claim 19 further modifies the “means for producing suction” to include a suction housing (thereby removing it from consideration under 35 USC 112(6)) however claim 45 the “means for producing suction” is an element of a suction housing.

Applicant argues that the limitation is meant to cover the suction housing and vortex box including fans, parallel interior elements, etc., however given the inconsistencies the examiner is applying a broader definition for the “means for producing suction” and more common to the stated function ie. a vacuum source. Because the function of the suction housing including vortex box, interior elements, etc. perform a contaminant removal process upon the material strips the examiner suggests labeling the limitation as “means for removing contaminants from the material strips” to include all of the recited elements and consideration under 35 USC 112(6).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 19, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Cann et al. (US 5,533,955).

Cann et al. disclose apparatus for forming strips of material comprising shredding mechanism 12; perforated belt conveyor 48; and means 84 for producing suction connected to housing 70 considered to be placed at or beyond a discharge position 32 of the belt 48; see figures 1 and 4.

Regarding claims 38, Cann teaches spraying means 98 with electrical switching device.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cann et al. (US 5,533,955).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art provide a foot pedal switch because Applicant has not disclosed that such a switch provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any switch because it would activate the spraying operation.

Art Unit: 3721

6. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cann et al. (US 5,533,955) in view of Cann et al. (US 5,472,779).

Cann et al. '955 does not directly include a means for providing positive air flow other than the suction device 84, however Cann et al. '779 teach a housing comprising upper portion 52 with section 58 for providing for positive airflow above the strips; see figures 1 and 3. It would have been obvious to one of ordinary skill in the art to include the upper suction housing as taught by Cann '779 in the invention to Cann '955 in order to control the positive airflow above the strips. Cann '955 discloses providing a means for supplying positive pressure above the strips; see column 7, lines 5+.

7. Claims 20-27 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cann et al. (US 5,533,955) in view of Campbell, Jr. et al. (US 5,156,075).

Cann et al. does not describe a means for creating a vortex, however Campbell, Jr. teach means for creating a vortex comprising a box 46 with rounded corners 54 and parallel interior elements 48, 50; fan 64; removable cover plate 36; see figures 1 and 2. It would have been obvious to one of ordinary skill in the art to provide the vortex box of Campbell in the invention to Cann et al. for the adequate removal of undesirables. Note that Cann et al. recognize providing positive pressure above the strips; see column 7, lines 5+.

8. Claims 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cann et al. (US 5,533,955) in view of Campbell, Jr. et al. (US 5,156,075). as applied to claims 20-27 above, and further in view of Ratzel (US 5,906,569).

The modified invention to Cann et al. does not further provide a suction means for producing suction within the shredding device however Ratzel discloses a similar apparatus for making dunnage strips comprising suction means 58 for producing suction within shredding device 22. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the suction means of Ratzel in the modified invention to Cann et al. in order to remove cutting waste before the further cleaning process.

### ***Response to Arguments***

9. Applicant's arguments filed 2/15/07 have been fully considered but they are not persuasive. While it is noted that all of the elements of the suction housing, vortex box, etc. are configured to perform the recited function ie. producing suction on the strips in a desired manner, the inconsistencies present in the claims caused a different interpretation than argued in order to be consistent with a majority of the claims.

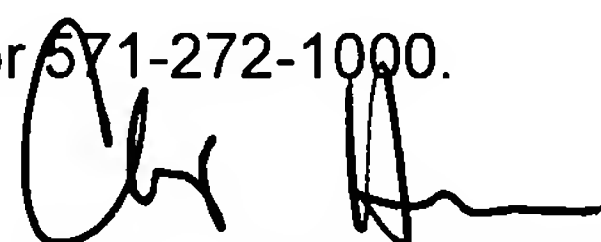
Note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 320,322 (Fed. Cir. 1999). In determining the patentability of claims, the PTO gives claim language its broadest reasonable interpretation" consistent with the specification and claims. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See MPEP § 904.1.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher R Harmon  
Primary Examiner  
Art Unit 3721